

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 DAVID JERRY PAULE

11 Defendant.

NO: 2:18-CR-227-RMP-JTR

PRETRIAL ORDER AND ORDER
APPROVING STIPULATION

12 A pretrial hearing was held in this matter on November 19, 2018. Defendant
13 David Jerry Paule, who is in custody, was present and represented by Assistant
14 Federal Defender Callie Steele. Assistant United States Attorney Brian Fogerty was
15 present on behalf of the Government. The Court has reviewed the file, has heard
16 from counsel, and is fully informed. This Order is entered to memorialize the oral
17 rulings of the Court.

18 Before the Court is the parties' Stipulation for Exclusion of Time Under
19 Speedy Trial Act, ECF No. 34. Having reviewed the Stipulation and the record,
20 the Court finds that the ends of justice served by the granting of a continuance of
21 the trial in this matter outweigh the best interests of the public and Defendant in a

1 speedy trial. A trial date of December 17, 2018, would deprive defense counsel of
2 adequate time to obtain and review discovery and provide effective preparation,
3 taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7).

4 Accordingly, **IT IS HEREBY ORDERED:**

5 **1.** The parties' Stipulation for Exclusion of Time Under Speedy Trial Act,
6 **ECF No. 34**, is **APPROVED**.

7 **2.** The current trial date of December 17, 2018, is **STRICKEN** and
8 **RESET** to **May 20, 2019**, at **8:45 a.m.** commencing with a **final** pretrial conference
9 at **8:30 a.m.** All hearings shall take place in **Las Vegas, Nevada**.

10 **3.** A pretrial conference is set for **April 8, 2019**, at **11:00 a.m.**

11 **4.** Counsel for defense shall notify Defendant of all hearings and ensure his
12 attendance at court.

13 **5.** Discovery shall be conducted pursuant to LCR 16-1.

14 **6.** Motions to Expedite, if any, shall be filed separately and noted for
15 hearing two (2) days from the date of filing, after informing opposing counsel of
16 such.

17 **7.** All pretrial motions and notices, pursuant to LCR 12-1(b), shall be filed
18 and served by **March 11, 2019**; responses are due **March 25, 2019**; and replies are
19 due **April 1, 2019**. Counsel shall note their motions for hearing at the pretrial
20 conference on **April 8, 2019**.

1 **8.** Requests for subpoenas by an indigent defendant shall be requested and
2 issued pursuant to LCR 17-1.

3 **9.** Trial briefs, requested voir dire, witness lists, jointly proposed jury
4 instructions, and a table of proposed jury instructions shall be filed and served on or
5 before **May 10, 2019** for the Court's consideration.

6 **(a)** The jointly proposed jury instructions should address only issues that are
7 unique to this case and shall include instructions regarding the elements of
8 each count, any necessary definitions, and a proposed verdict form.

9 **(b)** The parties shall provide the Court electronically with a table of
10 proposed, cited jury instructions. This table shall include:

11 **(i)** The instructions on which the parties agree;

12 **(ii)** The instructions that are disputed; and

13 **(iii)** The basis of any objection.

14 **(iv)** The jury instruction table shall be substantially in the following
15 form:

Proposed by	Instruction #	9th Cir. Cite	Objection	Response to objection
-------------	---------------	---------------	-----------	-----------------------

17 **(c)** In addition to the jury instruction table, each party shall address any
18 objections they have to instructions proposed by any other party in a
19 memorandum on or before **May 10, 2019**. The parties shall identify the
20 specific portion of any proposed instruction to which they object supported by
21 legal authority that supports the objection. Failure to file an objection to any

instruction may be construed as consent to the adoption of an instruction proposed by another party.

10. *Pretrial Exhibit Stipulation*

(a) The parties shall prepare a pretrial exhibit stipulation that shall contain each party's numbered list of all trial exhibits with the opposing party's objections to each exhibit, including the basis of the objection and the offering party's brief response. All exhibits to which there are no objections shall be deemed admitted, subject to any objections at trial that could not be raised in advance.

(b) The pretrial exhibit stipulation shall be substantially in the following form:

Pretrial Exhibit Stipulation

Plaintiff's/Defendant's Exhibits

Exhibit No.	Description	If Objection, State Grounds	Response to Objection
-------------	-------------	-----------------------------	-----------------------

(c) The pretrial exhibit stipulation shall be filed on **May 10, 2019**. Failure to comply with this paragraph could be deemed to constitute a waiver of all objections. Do not submit blanket or boilerplate objections to the opposing party's exhibits. These will be disregarded and overruled.

(d) Exhibits shall be pre-marked with the exhibit numbers that will be used at trial. Plaintiff's trial exhibits are to be numbered 1 through 199, and Defendant's exhibits are to be numbered 200 and following.

1 (e) Objections to exhibits and witnesses shall be heard at the final pretrial
2 conference.

3 **11. Trial Procedures**

4 The following procedures shall be utilized at trial:

5 (a) The Court utilizes JERS (Jury Evidence Recording System) to allow
6 evidence admitted for a trial to be viewed electronically via touchscreen
7 monitor in the jury deliberation room upon the conclusion of the trial. Please
8 note that the jury will receive a verbatim copy of the JERS exhibit list.

9 (b) The Court will conduct the majority of jury voir dire but allow counsel
10 fifteen minutes to ask additional questions or to do more in depth exploration
11 of issues raised by the Court;

12 (c) A total of thirteen jurors will be selected. Plaintiff shall have six
13 peremptory challenges, Defendant shall have ten peremptory challenges, and
14 each party shall have one challenge for the alternate juror. Fed. R. Crim. P.
15 24. The challenges shall be exercised alternately;

16 (d) Regular trial hours shall be from 8:45 a.m. to 12:00 noon, and 1:15 to
17 4:30 p.m.;

18 (e) The jurors will be provided with notebooks for note-taking and a copy of
19 preliminary and final instructions;
20
21

1 (f) Documents published to the jury by counsel shall be collected at the
2 conclusion of trial each day or following a witness's testimony regarding the
3 published document;

4 (g) A single photograph shall be taken of all witnesses following their
5 testimony for use by the jury to correlate a witness with the testimony he or
6 she provided. The photographs shall be maintained in a three-ring binder by
7 the Court. The photograph will have the witness's name on it and the date of
8 the witness's testimony. The photographs will be provided to the jury to assist
9 them during deliberations. Following deliberations, the photographs will be
10 destroyed by the Court and will not be a part of the record;

11 (h) Examination of witnesses shall be limited to direct, cross, redirect, and
12 recross. Fed. R. Evid. 611(a);

13 (i) Counsel are encouraged to limit requests for sidebars by anticipating
14 legal and evidentiary issues so that the issues may be addressed before trial
15 begins each day, during the lunch hour, or after trial hours;

16 (j) During trial, counsel are encouraged to exchange lists of the next day's
17 witnesses and exhibits so that objections or legal issues may be anticipated
18 and resolved outside the normal trial hours;

19 (k) Counsel shall have the next witness to be called to testify available
20 outside the courtroom, to avoid delay; and
21

12. Pursuant to the parties' Stipulation for Exclusion of Time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A) and (B)(iv), *see* ECF No. 34, all time from the trial date of **December 17, 2018**, to the new trial date of **May 20, 2019**, is **EXCLUDED** for speedy trial calculations.

IT IS SO ORDERED. The District Court Clerk is directed to file this Order and provide copies to counsel.

DATED November 21, 2018.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge